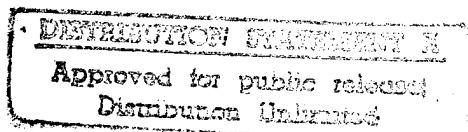
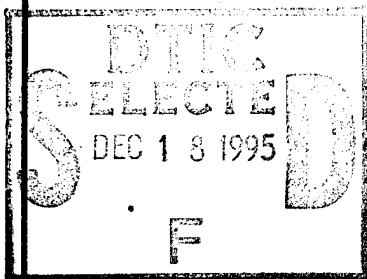


# CRIMINAL LAW: NONJUDICIAL PUNISHMENT

*Programmed Instruction*



19951215 021

## CRIMINAL LAW DIVISION

The Judge Advocate General's School  
United States Army  
Charlottesville, Virginia  
22903-1781

JA 330

MAY 94

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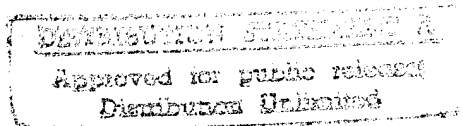
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## I. INTRODUCTION

### REFERENCES:

Uniform Code of Military Justice, Art. 15, 10 U.S.C. § 815 (1982). Manual for Courts-Martial, United States, 1984, Part V. Chapter 3, AR 27-10.

One of the most valuable disciplinary tools available to the commander is the option of imposing nonjudicial punishment. Dumas v. United States, 620 F.2d 246 (Ct. Cl. 1980). The drafters of the Uniform Code of Military Justice recognized the importance of a commander's power to impose light punishments upon members of the command for minor offenses. That authority is located in Article 15, UCMJ. Hence, nonjudicial punishment may be more readily recognized as an "Article 15" or "NJP." Note the language from United States v. Booker, 5 M.J. 238, 242 (C.M.A. 1977), wherein the court recognized the role of nonjudicial punishments:

We wholeheartedly express our firm belief that those exercising the command function need the disciplinary action provided for under Article 15 ... to meet and complete their military mission.

The provisions of Article 15 provide a framework for more detailed guidelines located in the Manual for Courts-Martial (Part V) and Chapter 3, Army Regulation 27-10. These three sources will serve as the basis for the materials which follow. Key provisions will be cited where appropriate.

As in any area of the law which is grounded primarily on statute or regulation, nonjudicial punishment is often viewed as a cut and dried system of do's and don'ts. That's true to a limited extent. There are some basics which may be readily grasped and applied. More important, however, is that this area of the law invariably raises questions which may not be easily answered by reference to Article 15, the MCM, or AR 27-10. It is then that the JA must examine the available law and provide a legal and common-sense answer.

This text sets forth the basics. Questions and practical problems will serve as your guide in assessing how well you have grasped those principles. If you discover that you have missed some points of the instruction, go back and pick up those points before going on to the next section.

## II. APPLICABLE POLICIES

A commander is encouraged to use nonpunitive measures to the maximum extent possible to further the efficiency of the command without resorting to the imposition of nonjudicial punishment (see R.C.M. 306(b) and (c)(2)). Resort to nonjudicial punishment is proper in all cases of minor offenses in which administrative measures are considered inadequate or inappropriate unless it is clear that nonjudicial punishment is not sufficient to meet the ends of justice and that more stringent measures must be taken. Nonjudicial punishment may be imposed in appropriate cases to--

(1) Correct, educate, and reform offenders who have shown that they cannot benefit by less stringent measures;

(2) Preserve an offender's record of service from unnecessary stigma by record of court-martial conviction; and

(3) Further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial. AR 27-10, para. 3-2.

Before imposing punishment under Article 15, commanders must consider all their options. In reviewing these alternatives the commander should be aware of the ultimate impact of the action upon the soldier's record, discipline of the command, and time required to effect the decision. When an offense has occurred one or more of the following options may be available to the commander:

(1) No action.

(2) Nonpunitive Action.

(a) Counseling (AR 600-20, AR 635-200).

(b) Administrative Reprimand/Admonition (AR 600-37).

(c) Withdrawal of Privileges (driving, pass, PX, check cashing, etc.) (AR 190-5, AR 630-5, AR 640-3).

(d) Adverse Efficiency Report (AR 623-105, AR 623-205).

(e) Administrative Reduction in Grade for Inefficiency (AR 600-200).

(f) Bar to Reenlistment (AR 601-280).

(3) Magistrate Court (generally traffic offenses):  
Note that some jurisdictions may require that certain traffic offenses be handled by Magistrate Court rather than by Article 15 punishment. See e.g., DOD Inst. 6055-4.

(4) Administrative Elimination Board Action (AR 635-200 and AR 635-100).

(5) Court-Martial

OR

(6) Nonjudicial Punishment.

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**STUDY CHECK**  
(Introduction and Policies)

Before proceeding to the next section write your answers to the following questions:

1. What three principal sources establish guidelines for imposing nonjudicial punishment?
2. State one instance in which nonjudicial punishment is appropriate.
3. CPT Jones is considering action against PVT Turkee for an offense punishable under the UCMJ. What options, if any, may be available to Jones in disposing of the offense (list three)?

ANSWERS ON NEXT PAGE

**ANSWERS TO STUDY CHECK**  
(Introduction and Policies)

1. Article 15, UCMJ;  
Part V, Manual for Courts-Martial; and  
AR 27-10, Chapter 3.
2. Nonjudicial punishment may be imposed in appropriate cases to:
  - (1) Correct, educate, and reform offenders who have shown that they cannot benefit by less stringent measures;
  - (2) Preserve an offender's record of service from unnecessary stigma by record of court-martial conviction; and
  - (3) Further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial. AR 27-10, para. 3-2.
3. CPT Jones' options include:
  - a. No action.
  - b. Nonpunitive action (reprimand, reduction, etc.).
  - c. Magistrate Court.
  - d. Administrative elimination board actions.
  - e. Nonjudicial punishment.
  - f. Court-martial.



### III. IMPOSITION AUTHORITY

#### A. Who May Give an Article 15?

The general rule is that any commander is authorized to impose punishment under the authority conferred by Article 15. The term "commander," when speaking of Article 15 authority, refers to a "commissioned officer or warrant officer who by virtue of that officer's grade and assignment exercises primary command authority over a military organization or prescribed territorial area, that under pertinent official directives is recognized as a command." AR 27-10, para. 3-7.

Whether a unit constitutes a "command" sometimes raises questions. AR 27-10, para. 3-7a(3), indicates that commands include companies, troops, batteries, numbered units and detachments, missions, Army elements of unified commands and joint task forces, service schools, and area commands. This list is not exhaustive. If there is doubt whether the commander in question has the requisite authority, look for guidance in official directives or orders which may indicate whether the commander's unit is in fact a command. Also, determine if the commander's superior looks to him or her as the individual chiefly responsible for maintaining discipline in the unit.

The commander's discretion to impose an Article 15 is personal and must not be hampered by any superior's "guidelines" or "policies." AR 27-10, para. 3-4. Although a superior commander may not tell a subordinate when to impose an Article 15 or how much punishment should be assessed, the subordinate's authority to impose the Article 15 may be limited.

The superior commander may:

- (1) Totally withhold the subordinate's authority, or
- (2) Partially limit the authority in (1) a particular category of offenses (e.g., all larcenies), (2) a certain category of offenders (e.g., all officers), or (3) in a particular case (e.g., a fight between two companies). See also MCM, 1984, Part V, para. 2a.

Because the authority to impose an Article 15 is an attribute of command, a commander may not, as a general rule, delegate that authority to a subordinate. An

exception to that rule is that an officer authorized to exercise general court-martial jurisdiction and any general officer in command may delegate Article 15 powers to a commissioned officer actually acting as a deputy or assistant commander. Another exception is that a commander may delegate Article 15 authority to a chief of staff if that chief of staff is a general officer. These delegations must be in writing and may be exercised only when the delegatee is senior in rank to the person being punished. AR 27-10, para. 3-7b.

A commander's delegation of the authority does not prevent that commander from personally acting in any case. An appeal from punishment imposed under a delegation of powers will be acted upon by the authority next superior to the officer who delegated the authority. AR 27-10, para. 3-7b.

#### **B. Who May Receive an Article 15?**

A commander may impose nonjudicial punishment upon military members of the command. Individuals are considered to be members of the command if they are assigned to the command or in any other way connected with it by detail or attachment.

If there is any question as to whether an individual is within the command, examine written or oral orders which affect the individual's status. If the orders indicate that the soldier is

(1) attached for rations, quarters, and administration, or

(2) attached for administration of military justice, or

(3) attached for administration,

the individual will normally be considered to be a member of the command for purposes of Article 15.

If the orders or directives do not address the problem, look at the circumstances and consider such factors as where the individual slept, ate, worked, was paid and the duration of the status. AR 27-10, para. 3-8a.

A soldier could be a member (for the purposes of Article 15) of several commands. For example, PFC Jones who is a member of A Company at Fort Sticks, goes on TDY to Fort Acres where he is temporarily assigned to

Company B. Theoretically, he is a member of both Company A and Company B for purposes of nonjudicial punishment.

Article 15 may not be imposed upon individuals once their status has terminated. For example, once Jones returns to his parent unit (Company A) he is no longer amenable to punishment by the commander of Company B. The commander of Company B may forward reports of offenses to Company A's commander for possible Article 15 punishment. AR 27-10, para. 3-8b.

Army officers will not impose nonjudicial punishment on a member of another armed force unless part of a unified or specified command, joint command or task force, or when authorized by the Secretary of Defense. AR 27-10, para. 3-8c.

Article 15 should not normally be imposed for offenses which have already been dealt with by civil authorities. AR 27-10, Chapter 4.

**STUDY CHECK**  
(Imposition Authority)

Before proceeding, answer the following questions which are based on the material in the preceding section:

1. \_\_\_\_\_ A senior noncommissioned officer (NCO) acting under the supervision of a commander may impose nonjudicial punishment (true/false).
2. \_\_\_\_\_ The commandant of a service school may have Article 15 authority (true/false).
3. \_\_\_\_\_ A superior commander who is dissatisfied with the rising frequency of larcenies may instruct subordinate commanders to increase the number of Article 15s for larcenies or related offenses (true/false).
4. \_\_\_\_\_ A company commander may delegate her Article 15 powers to another trusted and responsible officer in her command (true/false).
5. Upon whom may a commander impose nonjudicial punishment?

**ANSWERS TO STUDY CHECK**

**ANSWERS TO STUDY CHECK**  
(Imposition Authority)

1. False. Note: This rule applies even if the NCO is a "commander" of a unit. The prohibition is clear.
2. True.
3. False. A superior commander could, however, withhold authority from a subordinate commander.
4. False. Note that an officer who properly assumes command in the absence of the commander may exercise Article 15 as well as all other powers of command.
5. A commander may impose nonjudicial punishment upon "members of his command."

#### IV. PROCEDURES

##### A. Appropriateness of Article 15 Punishment.

Upon learning that an offense has occurred, the commander should conduct an informal inquiry into the matter. Law enforcement reports covering the offense may be reviewed in determining whether punishment under Article 15 is appropriate.

The general rule is that Article 15s should be given for minor offenses under the punitive articles of the UCMJ. An offense is considered "minor" if the maximum authorized punishment for the offense does not include a dishonorable discharge or confinement for more than one year. AR 27-10, para. 3-9.

This is only a guideline. The standard for determining whether the offense is minor is flexible and requires examination of the surrounding circumstances. For example, possession of illegal drugs is normally considered a "major" offense but the circumstances of the possession may dictate that it is a minor offense for the purposes of an Article 15 (see United States v. Rivera, 45 C.M.R. 582, 584, n.3 (A.C.M.R. 1972)).

Violations of, or failures to obey, general regulations or orders may properly be considered as minor offenses when the prohibited conduct is itself of a minor nature. AR 27-10, para. 3-9.

A situation may arise in which an Article 15 is given for a major offense. You should be aware of the effect of this action.

If the offense in question is minor, the imposition of an Article 15 will bar any later court-martial for the same offense. If, on the other hand, the offense is major, the soldier may later be court-martialed for the same offense. The soldier must, however, be given full credit for the punishment imposed under the Article 15. (See United States v. Pierce, 27 M.J. 367 (C.M.A. 1989).

In determining the appropriateness of Article 15 punishment the commander should also consider the experience, age, intelligence, and prior military record of the individual. We will discuss some of the ramifications of nonjudicial punishment in a later section.

There are two kinds of Article 15s: summarized and formal.

#### B. Summarized Article 15

Assume that the commander, after conducting an inquiry, has decided to impose nonjudicial punishment under Article 15. If the alleged offender is an enlisted member, and the commander determines that punishment should not exceed extra duty for 14 days, restriction for 14 days, an oral reprimand or admonition, or any combination thereof, summarized proceedings may be used. AR 27-10, para. 3-16.

##### 1. Notice.

The imposing commander may notify the soldier of the intent to impose nonjudicial punishment. The commander may alternatively designate a subordinate officer or noncommissioned officer in the grade E-7 or above to provide this notice, provided such soldier is senior to the soldier being notified. AR 27-10, para. 3-18a. The notice will include:

a. The fact that the commander intends to use summarized proceedings and the maximum punishment imposable.

b. The right to remain silent.

c. Offenses allegedly committed and articles of the UCMJ violated.

d. The right to demand trial.

e. The right to confront witnesses, examine evidence, and submit matters in defense, extenuation, and mitigation.

f. The right to appeal.

The soldier will be given a reasonable time (normally 24 hours) to decide whether to demand trial by court-martial or to gather information to present to the commander. There is no right to consult with legally qualified counsel in deciding whether to demand trial. The soldier is not entitled to have a spokesperson present at the hearing.

## 2. Hearing.

If the soldier does not demand trial, the commander may proceed with the hearing. The hearing will consist of the following:

a. Consideration of evidence, written or oral, against the soldier.

b. Examination of evidence by the soldier and presentation of matters in defense, extenuation or mitigation.

c. Determination of guilt or innocence by the commander.

d. Imposition of punishment or termination of the proceedings. Regardless of the grade of the imposing commander, punishment cannot exceed 14 days extra duty, 14 days restriction, an oral reprimand, or admonition, or any combination of these punishments.

e. Explanation of the right to appeal. The soldier may appeal to the next superior authority. This is accomplished by initialing the appropriate block in block 4, DA Form 2627-1. The soldier will be given a reasonable time to submit an appeal. Appeals submitted more than 5 days after imposition of punishment can be considered untimely. AR 27-10, para. 3-16. Appeals will be promptly decided. The member may be required to undergo punishment pending appeal. Once the appeal is submitted the command has three days (not counting date of submission) to decide the appeal. If the appeal is not processed in this period, further performance of any punishment involving extra duty and/or restriction will be delayed at the request of the soldier pending a decision on the appeal. AR 27-10, para. 3-16e.

## 3. Recording and Filing.

Summarized proceedings are recorded, usually handwritten, on DA Form 2627-1. This form will be maintained locally in nonjudicial punishment files and destroyed either upon the soldier's transfer from the unit or two years from imposition, whichever occurs first. AR 27-10, para. 3-16f.



**STUDY CHECK**  
(Procedures)

Answer the following questions before proceeding.

1. What is a "minor offense" for purposes of nonjudicial punishment?
2. Article 15s should be given for minor offenses only. (true/false).
3. What effect, if any, may an Article 15 have on a later court-martial for the same offense?
4. To save time, CPT Burnemupp wants his First Sergeant to give the written and oral notice of Burnemupp's intent to impose an Article 15. What do you advise him?
5. A soldier can start restriction immediately upon imposition, even if he appeals his Article 15 (true/false).

**ANSWERS ON NEXT PAGE**

**ANSWERS TO STUDY CHECK**  
(Procedures)

1. An offense is minor if the maximum authorized punishment under the Manual does not include a dishonorable discharge or confinement in excess of one year.
2. True.
3. If the offense is minor, a later court-martial is barred. If the offense is major, a court-martial is allowed. The soldier must be given full credit for the Article 15 punishment.
4. Burnemupp may have his First Sergeant give notice to the soldier if the First Sergeant is senior to the soldier.
5. True.

### C. Formal Proceedings.

A commander may, after the preliminary inquiry, determine that the alleged offender is an officer, or that the punishment may exceed what could be imposed by a summarized Article 15. At that point the commander must ensure that the soldier is notified of the intent to use formal proceedings. AR 27-10, para. 3-17.

#### 1. Notice.

The commander may personally notify the soldier of the intent to use formal proceedings, however, as in summarized proceedings, notice may be given by a designated officer or noncommissioned officer in the grade E-7 or above provided such person is senior to the soldier being notified. AR 27-10, para. 3-18a. The notice should include an explanation of the rights available to the soldier. These rights include what is available in summarized proceedings, and additionally include:

a. The right to consult with legally qualified counsel about the decision to demand trial or accept nonjudicial punishment.

b. The right to have a spokesperson present at the hearing.

c. The right to request an open hearing. The commander decides if the hearing is to be open. AR 27-10, para. 3-18g(2).

The soldier is not entitled to know the type or amount of punishment that will be imposed if the commander finds the soldier guilty at the Article 15 hearing. Upon request the soldier should be informed of the maximum punishment that may be given and the maximum punishment that could be adjudged by a court-martial for the offense being considered. AR 27-10, para. 3-18f(2).

The commander will provide a reasonable time (normally 48 hours) for the soldier to consult with counsel and decide whether to demand court-martial. If at the end of the designated time (including extensions) the soldier does not demand trial, the commander may conduct the hearing and, if appropriate, impose punishment. The commander may also impose punishment if the soldier refuses to complete item 3, DA Form 2627 (decision to demand trial or accept the nonjudicial punishment procedure) within the prescribed time. If punishment is imposed under these conditions,

the DA Form 2627 will reflect that fact. AR 27-10, para. 3-18f(4).

## 2. Consultation with counsel and hearing.

Once the notification session has been completed, the soldier may consult with counsel. Before proceeding, the soldier should be advised of the available options:

- a. Demand trial by court-martial; or
- b. Waive a court-martial but request an open hearing before the commander; or
- c. Waive a court-martial and open hearing but present matters in defense, extenuation, or mitigation before the commander; or
- d. Either expressly admit guilt or say nothing (Note: A decision to accept an Article 15 is not an admission of guilt).

Unless the individual is attached to or embarked in a vessel, he or she may demand trial by court-martial in lieu of an Article 15. AR 27-10, para. 3-18d. If the soldier does not demand a court-martial, then the commander may proceed under Article 15. If the soldier demands trial by court-martial, the Article 15 proceedings must be stopped. The commander must then decide whether to prefer court-martial charges.

If the Article 15 hearing proceeds, the soldier may request witnesses in defense, extenuation or mitigation. The imposing commander determines what witnesses are reasonably available (ordinarily only personnel at the installation). AR 27-10, para. 3-18i. The commander is not bound by the rules of evidence at the hearing but may consider any relevant matter, including unsworn statements. AR 27-10, para. 3-18j. The commander may not impose punishment unless convinced beyond a reasonable doubt of the soldier's guilt. AR 27-10, I01, para. 3-18j.

If the commander imposes punishment, the appellate rights available will be explained to the soldier. As in summarized proceedings, all punishments are effective on date of imposition, unless the commander directs otherwise. If the soldier appeals, the command has five days to decide the appeal. Failure to do so will interrupt punishments involving deprivation of liberty

(correctional custody, extra duty, restriction) if the soldier so requests. AR 27-10, para. 3-21b.

### 3. Recording and filing.

All formal proceedings are recorded on DA Form 2627. For soldiers E-4 and below (prior to punishment), the original will be filed locally in unit nonjudicial punishment files. Such locally filed originals will be destroyed two years from the date of imposition of punishment or on the soldier's transfer to another general court-martial convening authority, whichever occurs first. AR 27-10, para. 3-37b(1).

For all other soldiers, the original of the form is filed in the soldier's official military personnel file (OMPF). The imposing commander indicates on the form whether it is to be filed on the performance fiche or the restricted fiche of the official military personnel file. The imposing commander's filing decision is final unless there is a previous Article 15, that has not been wholly set aside, filed in the restricted fiche, and the soldier, prior to that punishment, was in the grade E5 or higher. If that situation exists then the current Article 15 must be filed in the performance fiche. AR 27-10, paras. 3-37(1.1); 3-66.

The performance fiche is routinely used for assignments, school selections and promotions. The restricted fiche is not viewed without the written permission of the commander of PERSCOM. Although the imposing commander's decision on filing is final, officers and enlisted members in the grade of E5 or above may petition the Department of the Army Suitability Evaluation Board to transfer records of nonjudicial punishment from the performance fiche to the restricted fiche. The soldier must submit substantive evidence that transfer of the Article 15 is in the best interest of the Army and that its intended purpose has been served. The DA Suitability Evaluation Board will make a recommendation of approval or disapproval of the request to the Deputy Chief of Staff for Personnel (DCSPER). AR 27-10, para. 3-43.

**STUDY CHECK**  
(Procedures, Cont.)

The following questions should be answered before continuing:

1. List the soldier's four options when offered an Article 15.

2. If the soldier demands trial by court-martial, the commander may proceed with both the Article 15 and preferral of court-martial charges (true/false).

3. Before deciding whether to accept the Article 15, a soldier is entitled to know what punishment the commander intends to impose (true/false).

4. Who decides whether a witness is available for an Article 15 proceeding?

5. An imposing commander can file an Article 15 in a soldier's performance fiche of his OMPF when the soldier is a specialist (E-4) or below.

ANSWERS ON NEXT PAGE

**ANSWER TO STUDY CHECK**  
(Procedures, cont.)

1. Options:
  - a. Demand trial by court-martial; or
  - b. Waive a court-martial but request an open hearing before the commander; or
  - c. Waive a court-martial and open hearing but present matters in defense, extenuation, or mitigation before the commander; or
  - d. Either expressly admit guilt or say nothing.
2. False!!!
3. False.
4. The commander who is conducting the hearing.
5. False. Local unit filing only.

## V. PUNISHMENTS AT FORMAL PROCEEDINGS

### A. Introduction:

Several days ago PFC Diddrong was advised by the company commander, CPT DuRite, that the latter was considering punishment under Article 15 formal proceedings. Diddrong consulted with counsel and decided to waive court-martial but to present a favorable statement from the platoon sergeant. DuRite concluded that Diddrong had committed the offense and considered the statement in assessing the punishment. What punishments may be assessed?

The amount and type of punishment at formal proceedings will depend upon (1) the grade of the commander imposing the punishment and (2) the grade of the soldier being punished.

There are four general categories of punishments:

1. Censures.
2. Loss of liberty.
3. Loss of pay.
4. Reduction in grade.

Before we examine the particular rules applicable to each of these categories, please scan the punishment chart on the next page.



# MAXIMUM PUNISHMENTS AT FORMAL PROCEEDINGS

Punishment for Enlisted Members	Imposed by Company Grade Officers	Imposed by Field Grade Officers
Admonition/Reprimand	Yes	Yes
Extra Duties	14 days	45 days
Restriction	14 days	60 days
Correctional Custody (E1 thru E3)	7 days	30 days
Restricted Diet Confinement (E1 thru E3 attached or embarked on vessel)	3 days	3 days
Reduction	(E1 thru E-4) 1 Grade	(E-5 and E-6) 1 grade in peacetime  (E-4 and below) 1 or more grades
Forfeiture	7 days' pay	1/2 of 1 month's pay for 2 months

## Punishment for Officers and Warrant Officers

Admonition/Reprimand	Yes	Yes
Restriction	30 days	30 days

Only General Officer or GCM convening  
authority may impose the following  
punishments:

Arrest	30 days
Restriction	60 days
Forfeiture	1/2 of 1 month's pay for 2 months

## B. Censures:

There are two types of censure:

1. Admonition
2. Reprimand

They may be either oral or written. The admonition is a warning that if the particular conduct is repeated, the consequences will be more severe. The reprimand is a formal censure condemning misconduct. The censure should specifically indicate that it is being imposed as punishment under Article 15. AR 27-10, para. 3-3b. In the case of commissioned officers and warrant officers, admonition and reprimands given as nonjudicial punishment must be administered in writing. AR 27-10, Table 3-1, n.7.

## C. Loss of Liberty:

1. Correctional Custody may be imposed upon soldiers in the grade of E-3 or below. The stated purpose of this punishment is to provide close supervision not amounting to confinement and its attendant stigma. (see AR 190-34, Correctional Custody, for further discussion.) The facilities used for this purpose are usually austere and conducive to rigorous correction. Correctional custody may be imposed by any commander unless authority to impose correctional custody has been withheld or limited by a superior authority. AR 27-10, para. 3-19b(1). Table 3-1, n.2.

2. Arrest in Quarters is reserved for officers or warrant officers. While in this status, the individual may not exercise command. If a superior commander, knowing of the arrest status, assigns command duties to the officer, the arrest terminates. AR 27-10, para. 3-19b(4).

3. Extra Duty may be performed at any time and for any length of time within the duration of the punishment. Normal extra duties might include fatigue duty or any other military duty. No extra duty may be imposed that--

a. constitutes cruel or unusual punishment or a punishment not sanctioned by service customs, or

b. is normally intended as an honor (honor guard), or

c. is unnecessarily degrading or constitutes a safety hazard.

A specialist or NCO may not be assigned extra duties which demean his or her position. AR 27-10, para. 3-19b(5).

4. Restriction is the least severe form of deprivation of liberty (moral rather than physical restraint). The individual is to remain within specified limits (e.g., company area). The limits may be changed later as long as the new limits are not more restrictive than the original limits. AR 27-10, para. 3-19b(3). Unless otherwise specified, the individual continues to perform military duties. MCM, 1984, Part V, para. 5c(2).

5. Confinement on diminished rations may be imposed only upon enlisted personnel in grade of E-3 or below who are attached to or embarked on a vessel. AR 27-10, para. 3-19b(2).

#### D. Loss of Pay.

Forfeiture of pay is a permanent loss of basic pay, sea pay, and foreign duty pay. If the imposed punishment includes a reduction, the forfeiture is based on the lower pay grade.

An imposed punishment of forfeiture should be indicated in dollar amounts as follows (AR 27-10, para. 3-19b(7)):

When the forfeiture is to be applied for not more than 1 month:

"Forfeiture of \$

When the forfeiture is to be applied for more than 1 month:

"Forfeiture of \$\_\_\_\_\_per month for 2 months."

Note: If commanders have imposed forfeiture of pay as a punishment, they should ensure that the forfeiture has been imposed by checking future Leave and Earnings Statements. The Reconciliation Log procedures should be used to keep track of such matters. AR 27-10, para. 3-39.

#### E. Reduction in Grade.

A reduction in grade is the most severe form of nonjudicial punishment. It affects not only the amount of pay the individual will receive but often results in loss of privileges and responsibilities.

The following rules relate to this form of punishment:

1. A reduction may be imposed only by a commander who has general authority to promote to the grade from which he or she is demoting. AR 600-200, para. 7-4a, provides:

The commanders below may promote, subject to authority and responsibility by higher commanders:

#### Grades

#### Promotion Authority

E-4 and below

Unit commanders may advance or promote assigned soldiers and those of the Reserve Components. They may advance eligible attached soldiers to Grades E-2 and E-3, and promote to grade E-4 subject to the concurrence of the assigned commander.

E-5 and E-6

Field grade commanders of any unit authorized a commander in the grade of lieutenant colonel or higher may promote soldiers to units that are attached/assigned or on TDY or attached (for military justice and administration) to their command or installation.

E-7, E-8 and E-9

Headquarters, Department of the Army.

AR 600-200, para. 6-3, prohibits the reduction for misconduct of personnel in grades E-7 through E-9 under Article 15.

2. Individuals in the grade E-5 or above may be reduced only one grade at a time in peacetime. MCM, 1984, Part V, para. 5b(2)(B)(iv).

3. The new date of rank is the date the reduction is imposed. If the commander suspends the reduction, the date of rank in grade before punishment imposed remains unchanged.

5. Any reduction imposed by an officer not having the authority to do so is void and must be set aside. AR 27-10, para. 3-19.

#### F. Combinations of Punishments.

The punishments discussed earlier may be combined with the following exceptions. Normally, no two or more punishments involving deprivation of liberty may be combined to run either consecutively or concurrently. Restriction and extra duties may be combined, however, in any manner to run for a length of time not exceeding the maximum period for extra duties. AR 27-10, para. 3-19b(8).

**STUDY CHECK**  
**(Punishments)**

How are you doing? Try these on for size:

1. The amount and type of nonjudicial punishment depends upon (a) \_\_\_\_\_ and (b) \_\_\_\_\_.

2. What are the four general categories of punishments?

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Review the following punishments and indicate whether they are valid or invalid. If they are invalid, indicate why. You may wish to refer to the punishment chart on page 22.

3. The company commander of D Company, CPT Slick, imposes upon a SGT (E-6) the following punishment:

Reduction to the grade of E-5 and restriction to the company area for 16 days.

Valid \_\_\_\_\_.

Invalid \_\_\_\_\_. Why?

4. The battalion commander, LTC Burners, has imposed the following punishment upon PFC (E-3) Stuhlepidjun:

Restriction for 60 days, extra duties for 45 days and forfeiture of 1/4 of 1 month's pay for 1 month.

Valid \_\_\_\_\_.

Invalid \_\_\_\_\_. Why?

5. COL Snirnflirt has imposed the following punishment upon Specialist 4 (E-4) Gromff:

Reduction to PFC (E-3).

Valid\_\_\_\_\_.

Invalid \_\_\_\_\_. Why?

**ANSWERS ON NEXT PAGE**

**ANSWERS TO STUDY CHECK**  
(Punishments)

1. (a) Grade of commander imposing the punishment and (b) grade of persons being punished.

2. Censure, Deprivation of Liberty, Loss of Pay and Reduction in Grade.

3. Invalid: A company grade officer (CPT) may not reduce an E-6 because the company commander does not have the authority to promote to that grade. Also, the restriction must be limited to 14 days.

4. Invalid: If restriction and extra duties are combined, the restriction may not run longer than the maximum for extra duties (i.e., 45 days). Here, restriction must be reduced to 45 days. The 45 days extra duties may stand. Also, the punishment incorrectly reflects the forfeiture. It should state a dollar amount.

5. Valid.



## **VI. APPEALS**

### **A. Introduction.**

As we noted earlier, one of the rights available to an individual being punished under Article 15 is the right to appeal. The recognized grounds for appeal are:

1. Punishment was disproportionate to the offense.
2. Punishment was unjust because it did not comply with the law and regulations. MCM, 1984, Part V, para. 7a.

The individual may argue lack of guilt--acceptance of the Article 15 is not an admission of guilt. Rather, it is an agreement to use Article 15 procedures.

The appeal is started with a notation on the DA Form 2627 or DA Form 2627-1, when the soldier indicates a desire to appeal the punishment. AR 27-10, para. 3-31.

An appeal not made within a reasonable period of time may be rejected by the appellate authority. Normally, an appeal submitted within 5 days after imposition of the punishment is considered timely. After 5 days, the superior commander may determine the Article 15 to be timely "for the good cause shown." AR 27-10, para. 3-29.

### **B. Appellate Authority.**

Who acts on the appeal? The soldier's appeal is first routed through the commander who imposed the punishment for possible action. For example, the commander may reconsider and take mitigating action. If the commander does this then the individual should be informed and asked if further relief is requested. If so, the matter is forwarded to the appellate authority who is the authority "next superior" to the authority who imposed the punishment. For example, an appeal from an Article 15 imposed by a company commander would be sent to the company commander's battalion commander. AR 27-10, para. 3-30.

If the individual is transferred, the appeal would be sent to the "new" appellate authority (i.e., the new battalion commander if we extend the example given above). AR 27-10, para. 3-30.

You will also recall that when we discussed the delegation of authority to impose an Article 15 we noted that in limited cases the authority could be delegated. The same holds true here. A "superior authority" who is a commander exercising general court-martial jurisdiction, or a general in command, may delegate his or her appellate powers. AR 27-10, para. 3-30b.

#### C. JA Review.

Before an appellate authority may act, a judge advocate must review the case (Item 8, DA Form 2627) If the punishment includes:

1. Arrest in quarters for more than seven (7) days;
2. Correctional custody for more than seven (7) days;
3. Forfeiture of more than seven (7) days' pay;
4. Reduction of one or more pay grades from the fourth or a higher pay grade;
5. Extra duties for more than 14 days;
6. Restriction for more than 14 days. AR 27-10, para. 3-33.

#### D. Appellate Options.

Appellate authorities have a number of options in deciding what action to take on an Article 15. They can of course approve the punishment as it stands. They may not increase the punishment. The remaining options then are actions which may be viewed as lessening the imposed punishment.

Although these mitigating actions are normally taken on appeal, the commander who imposed the punishment could take these steps even in the absence of an appeal, formal or otherwise.

The same holds true going up the chain of command. Any superior authority may take these actions. For

example, Jones appeals her Article 15 (imposed by her company commander) to her battalion commander who in turn approves the punishment. The brigade commander hears of the situation and suspends a portion of the sentence--even though Jones made no appeal to the brigade commander. AR 27-10, para. 3-35.

To carry it one step further, a "successor in command" to the commander who imposed the punishment may also take action on the punishment. AR 27-10, para. 3-32.

With these points in mind, let's take a look at the various options.

1. Suspension.

The purpose of suspending the punishment (or portions thereof) is to provide a probationary period for the soldier. If the soldier commits further misconduct amounting to a violation of the UCMJ during the period of suspension, the suspension may be "vacated" and the punishment executed. If the punishment is not vacated before the end of the period of suspension, however, the punishment will be automatically remitted--that is, cancelled.

Several special rules on suspension should be noted (para. 6a, Part V, MCM, 1984):

a. An executed punishment of reduction or forfeiture may be suspended only within a period of four months after the date of imposition.

b. Suspension of a punishment may not be for a period longer than six months from the date of suspension.

c. Expiration of enlistment or term of service automatically terminates the suspension.

d. A suspension includes the condition that the soldier not violate any punitive article. The imposing commander may specify additional conditions of the suspension.

e. Although a formal hearing is not required to vacate a suspension, the soldier should be given an opportunity to appear before the officer authorized to vacate the suspension if the punishment in question is one of those which would require JA review unless such

an appearance is not practicable. AR 27-10, para. 3-25.

## 2. Mitigation.

Mitigation is a reduction of the quantity and/or quality of the punishment while the general nature of the punishment remains the same. AR 27-10, para. 3-26.

Example: Restriction for 14 days is reduced to restriction for seven days or extra duties for seven days.

Example: Reduction in grade is converted to forfeiture of pay. Note: This is an exception to the rule which requires the general nature of the punishment to remain the same. Further, in this instance care should be exercised to ensure that the mitigated punishment of forfeiture of pay, added to any other forfeitures which were originally imposed, does not exceed the maximum amount of loss of pay which could have been originally imposed.

There are several general limitations on mitigation:

First, the power to mitigate exists only with respect to a punishment (or portion thereof) which is unexecuted" (An exception to this limitation is that a reduction in grade may be mitigated to a forfeiture of pay even though the reduction has been executed. AR 27-10, para. 3-26c).

Second, when mitigating punishments of deprivation of liberty to lesser amounts, the new punishment may not run for a period greater than the remainder of the original punishment. Example: A punishment of correctional custody for 14 days is mitigated to restriction after 4 days of the punishment have been served. The new punishment of restriction may only run for the remainder--10 days.

Third, a reduction in grade may not be mitigated to a lesser reduction in grade.

## 3. Remission.

This action cancels any unexecuted portion of the punishment. An unsuspended reduction is executed on imposition, and, therefore, cannot be remitted. A discharge automatically remits the unexecuted portion of the punishment. (Persons punished under Article 15 may

not be held past the end of their enlistment (ETS date) to complete unexecuted punishments). AR 27-10, para. 3-27.

4. Setting Aside.

If the punishment results in a clear injustice, the punishment or any portion thereof may be set aside and the soldier's rights and property restored. An example of "clear injustice" would be the discovery of new evidence unquestionably exculpating the soldier. The punishment may be executed or unexecuted. AR 27-10, para. 3-28. Actions to set aside an Article 15 should normally be taken within four months of the imposition.

**STUDY CHECK**  
(Appeals)

Answer the following questions before reading further:

1. What are the two generally recognized grounds for appealing an Article 15?

2. Who is the appellate authority?

3. State the effect of:

- a. Suspension
- b. Mitigation
- c. Remission
- d. Setting Aside

4. Whether an Article 15 (on appeal) is reviewed by a JA is strictly a matter of discretion with the commanding general \_\_\_\_\_ (true/false).

Review the following appellate actions and determine if the resulting punishment is valid:

5. PFC (E-3) Jones received a company grade Article 15 punishment of 14 days restriction and reduction to PVT (E-2). The battalion commander (on appeal) changed the punishment to 13 days restriction and forfeiture of \$10 a month for two months.

Valid \_\_\_\_\_.

Invalid \_\_\_\_\_. Why?

6. LTC Snorkes imposed a punishment of reduction from E-4 to E-2 and restriction for 35 days. It was mitigated on appeal to reduction from E-4 to E-3 and correctional custody for 35 days.

Valid \_\_\_\_\_.

Invalid \_\_\_\_\_. Why?

ANSWER ON NEXT PAGE

ANSWERS TO STUDY CHECK  
(Appeals)

1. Punishment was disproportionate to the offense or punishment was unjust because it did not comply with the law and regulations.

2. The next superior authority to the authority who imposed the punishment.

3. (a) Suspension: places soldier on probation (not more than 6 months).

(b) Mitigation: reduces the quality and/or quantity of the punishment which is unexecuted.

(c) Remission: cancels the unexecuted portions of the punishment.

(d) Setting Aside: restores pay, rights, privileges, etc., to soldier.

4. False. Certain punishments must be reviewed by a JA when they are appealed.

5. Invalid. The battalion commander has "increased" the punishment by changing the reduction to a forfeiture involving two month's pay. A company grade Article 15 may only touch one month's pay.

6. Invalid. Reduction may not be mitigated to an intermediate grade. Also, the change from restriction to correctional custody constitutes an increase in the punishment.

## VII. CONSEQUENCES OF ARTICLE 15 PUNISHMENT

### A. Introduction.

In the prior sections we discussed the rules, rights, and procedures under Article 15. We will now look at the impact of that punishment.

First, if the Article 15 is valid, there is a duty upon the soldier to perform the punishment (*i.e.*, extra duties, restriction). Failure to do so constitutes another offense.

Once the punishment has been imposed for a particular offense, another Article 15 may not be given for that same offense. Commanders should be encouraged to combine several minor offenses, arising out of the same transaction, in one Article 15. AR 27-10, para. 3-10.

### B. Plea of Former Punishment.

We covered this in an earlier section but let's make a quick review. If the Article 15 is for a minor offense, the soldier may not be court-martialed for that same offense. If the offense was not minor, then in any later court-martial for that offense, the soldier must be given full credit for the Article 15 punishment.

### C. Not a Federal Conviction.

An Article 15 is not a federal conviction! Therefore, it may not be used as a conviction under the habitual offender provisions of the Manual to increase punishment in a court-martial (R.C.M. 1003(d)); United States v. Johnson, 42 C.M.R. 66, 69 (C.M.A. 1970), United States v. Mack, 9 M.J. 300 (C.M.A. 1980)).

### D. Evidence of the Character of the Accused's Prior Service.

During the sentencing portion of a court-martial, the prosecutor may present evidence, including formal Article 15s properly in the accused's personnel records, as matters which relate to the character of the accused's prior service.



Vacation proceedings are admissible as a part of the Article 15 proceeding. United States v. Joslin, 47 C.M.R. 271 (A.F.C.M.R. 1973).

In United States v. Booker, 5 M.J. 238 (C.M.A. 1977), the Court of Military Appeals established some additional requirements for the admissibility of Article 15's. Before the Article 15 will be admitted into evidence the military judge must be satisfied that:

1. The individual was told of the right to consult with counsel. The advice of counsel is necessary to meaningfully explain the ramifications of a decision to proceed with an Article 15.

2. The soldier's waiver of the right to demand trial must be in writing (more than checking a block) and must establish that the waiver was a voluntary, knowing and intelligent decision.

However, in United States v. Mack, 9 M.J. 300 (C.M.A. 1980), the Court of Military Appeals determined that the DA Form 2627, if properly executed, is reasonable and adequate evidence of the soldier's opportunity to consult with counsel and whether the soldier demanded trial by court-martial.

**STUDY CHECK**  
(Consequences)

The end is in sight! One more time--answer these questions:

1. What duty does the Article 15 punishment impose?
2. The Article 15 punishment is a federal conviction \_\_\_\_\_ (true/false).
3. According to United States v. Booker, during the sentencing portion of a court-martial, the prosecutor may introduce an Article 15 only if (a) \_\_\_\_\_ and (b) \_\_\_\_\_.
4. United States v. Mack indicates the DA Form 2627 is a sufficient written waiver of the right to demand trial (true/false).

ANSWERS ON NEXT PAGE

**ANSWERS TO STUDY CHECK**  
(Consequences)

1. The soldier has a duty to perform or comply with the punishment.

2. False.

3. (a) The soldier was advised of the right to consult with counsel.

(b) The waiver of right to demand trial is in writing.

4. True.